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3 **BEFORE THE**
4 **BOARD OF REGISTERED NURSING**
5 **DEPARTMENT OF CONSUMER AFFAIRS**
6 **STATE OF CALIFORNIA**

7 In the Matter of the Statement of Issues
8 Against:

9 **BREE HOWINGTON**
10 **259 Allen Street**
11 **Brawley, CA 92227**

12 Respondent.

Case No. 2011-710

OAH No. 2011031282

DEFAULT DECISION AND ORDER

[Gov. Code § 11520]

13 **FINDINGS OF FACT**

14 1. On February 15, 2011, Complainant Louise R. Bailey, M.Ed., RN, in her official
15 capacity as the Executive Officer of the Board of Registered Nursing (Board), Department of
16 Consumer Affairs filed Statement of Issues No. 2011-710 against Respondent Bree Howington,
17 before the Board.

18 2. On June 21, 2010, the Board received an application for a Registered Nurse License
19 from Respondent. On June 7, 2010, Respondent certified under penalty of perjury to the
20 truthfulness of all statements, answers, and representations in the application.

21 3. On September 28, 2010, the Board issued a letter denying Respondent's Application.
22 On or about November 1, 2010, Respondent appealed the Board's denial of her application and
23 requested a hearing.

24 4. On February 22, 2011, an employee of the Department of Justice, served by Certified
25 and First Class Mail a copy of the Statement of Issues No. 2011-710; Statement to Respondent;
26 Request for Discovery; Government Code sections 11507.5, 11507.6, and 11507.7; Disciplinary
27 Guidelines; and blank copies of Respondent/Applicant's Notice of Designation of Counsel, and
28 Respondent /Applicant's Notice of Withdrawal of Request for Hearing, to Respondent's address
on her request for hearing letter, which was: 259 Allen Street, Brawley, CA 92227. A copy of
the Statement of Issues is attached as Exhibit A.

1 5. Service of the Statement of Issues was effective as a matter of law under the
2 provisions of Government Code section 11505, subdivision (c)

3 6. On March 25, 2011, a Notice of Hearing was served by Certified and First Class Mail
4 to Respondent at her above address, informing her that an administrative hearing in this matter
5 was scheduled for December 7, 2011. On November 30, 2011, Respondent withdrew her request
6 for hearing. (Exhibit B.)

7 7. Business and Professions Code section 118 states, in pertinent part:

8 (a) The withdrawal of an application for a license after it has been filed with a
9 board in the department shall not, unless the board has consented in writing to such
10 withdrawal, deprive the board of its authority to institute or continue a proceeding
11 against the applicant for the denial of the license upon any ground provided by law or
12 to enter an order denying the license upon any such ground.

13 8. California Government Code section 11520 states, in pertinent part:

14 (a) If the respondent either fails to file a notice of defense or to appear at the
15 hearing, the agency may take action based upon the respondent's express admissions
16 or upon other evidence and affidavits may be used as evidence without any notice to
17 respondent; and where the burden of proof is on the respondent to establish that the
18 respondent is entitled to the agency action sought, the agency may act without taking
19 evidence.

20 9. Pursuant to its authority under Government Code section 11520, the Board finds
21 Respondent is in default. The Board will take action without further hearing and, based on
22 evidence on file herein, finds that the allegations, in Statement of Issues No. 2011-710 are true.

23 **DETERMINATION OF ISSUES**

24 1. Based on the foregoing findings of fact, Respondent Bree Howington has subjected
25 her application for a Registered Nurse License to denial.

26 2. Service of Statement of Issues No. 2011-710 and related documents was proper and
27 in accordance with the law.

28 3. The agency has jurisdiction to adjudicate this case by default.

 4. The Board of Registered Nursing is authorized to deny Respondent's Application
based upon the following violations alleged in the Statement of Issues:

 a. Business and Professions Code section 480, subdivision (a)(1) – conviction of a
crime that is substantially related to the qualifications, duties, and functions of a registered nurse:

1 violating Vehicle Code section 23152, subdivision (a), driving under the influence of alcohol; and
2 Vehicle Code section 23152, subdivision (b), driving with a blood alcohol concentration (BAC)
3 of .08 or more, misdemeanors.

4 b. Business and Professions Code section 480, subdivision (a)(1) – conviction of a
5 crime that is substantially related to the qualifications, duties, and functions of a registered nurse:
6 violating Vehicle Code section 23152, subdivision (b), driving with a BAC of .08 percent or
7 more, a misdemeanor.

8 c. Business and Professions Code sections 480, subdivision (a)(3)(A), and 2762,
9 subdivision (b) – unprofessional conduct: Respondent used alcoholic beverages to an extent or in
10 a manner that was dangerous and injurious to herself and the public when she operated a motor
11 vehicle while under the influence of alcohol.

12 d. Business and Professions Code sections 480, subdivision (a)(3)(A), and 2762,
13 subdivision (c) – unprofessional conduct: Respondent was convicted of criminal offenses
14 involving the consumption of alcohol.

15 5. Pursuant to Business and Professions Code section 486, the earliest date Respondent
16 may file a Request to Reapply/Repeat Examination is one year from the effective date of this
17 Decision. At such time reapplication is made, all competent evidence of rehabilitation presented
18 will be considered.

ORDER

IT IS SO ORDERED that the application for Applicant for Registered Nurse License, filed by Respondent Bree Howington is denied.

Pursuant to Government Code section 11520, subdivision (c), Respondent may serve a written motion requesting that the Decision be vacated and stating the grounds relied on within seven days after service of the Decision on Respondent. The agency in its discretion may vacate the Decision and grant a hearing on a showing of good cause, as defined in the statute.

This Decision shall become effective on January 27, 2012

It is so ORDERED December 30, 2011

Long Hill
FOR THE BOARD OF REGISTERED NURSING
DEPARTMENT OF CONSUMER AFFAIRS

Attachments:

Exhibit A: Statement of Issues No. 2011-710

Exhibit B: Respondent's Notice of Withdrawal of Request for Hearing

Exhibit A

Statement of Issues No. 2011-710

1 KAMALA D. HARRIS
Attorney General of California
2 LINDA K. SCHNEIDER
Supervising Deputy Attorney General
3 State Bar No. 101336
AMANDA DODDS
4 Senior Legal Analyst
110 West "A" Street, Suite 1100
5 San Diego, CA 92101
P.O. Box 85266
6 San Diego, CA 92186-5266
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7 Facsimile: (619) 645-2061
Attorneys for Complainant

9 **BEFORE THE**
BOARD OF REGISTERED NURSING
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

12 In the Matter of the Statement of Issues
13 Against:

Case No. 2011-710

14 **BREE HOWINGTON**
259 Allen Street
15 Brawley, CA 92227

STATEMENT OF ISSUES

16 Respondent.

17 Complainant alleges:

18 **PARTIES**

19 1. Louise R. Bailey, M.Ed., RN (Complainant) brings this Statement of Issues solely in
20 her official capacity as the Executive Officer of the Board of Registered Nursing, Department of
21 Consumer Affairs.

22 2. On or about June 21, 2010, the Board of Registered Nursing, Department of
23 Consumer Affairs received an application for a Registered Nurse License from Bree Howington
24 (Respondent). On or about June 7, 2010, Bree Howington certified under penalty of perjury to
25 the truthfulness of all statements, answers, and representations in the application. The Board
26 denied the application on September 28, 2010.

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JURISDICTION

3. This Statement of Issues is brought before the Board of Registered Nursing (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code (Code) unless otherwise indicated.

4. Section 2736 of the Code provides, in pertinent part, that the Board may deny a license when it finds that the applicant has committed any acts constituting grounds for denial of licensure under section 480 of that Code.

STATUTORY PROVISIONS

5. Section 475 of the Code states:

(a) Notwithstanding any other provisions of this code, the provisions of this division shall govern the denial of licenses on the grounds of:

(1) Knowingly making a false statement of material fact, or knowingly omitting to state a material fact, in an application for a license.

(2) Conviction of a crime.

(3) Commission of any act involving dishonesty, fraud or deceit with the intent to substantially benefit himself or another, or substantially injure another.

(4) Commission of any act which, if done by a licensee of the business or profession in question, would be grounds for suspension or revocation of license.

(b) Notwithstanding any other provisions of this code, the provisions of this division shall govern the suspension and revocation of licenses on grounds specified in paragraphs (1) and (2) of subdivision (a).

(c) A license shall not be denied, suspended, or revoked on the grounds of a lack of good moral character or any similar ground relating to an applicant's character, reputation, personality, or habits.

6. Section 480 of the Code states:

(a) A board may deny a license regulated by this code on the grounds that the applicant has one of the following:

(1) Been convicted of a crime. A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action that a board is permitted to take following the establishment of a conviction may be taken when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code.

(2) Done any act involving dishonesty, fraud, or deceit with the intent to substantially benefit himself or herself or another, or substantially injure another.

1 (3) (A) Done any act that if done by a licentiate of the business or profession
2 in question, would be grounds for suspension or revocation of license.

3 (B) The board may deny a license pursuant to this subdivision only if the
4 crime or act is substantially related to the qualifications, functions, or duties of the
5 business or profession for which application is made.

6 7. Section 482 of the Code states:

7 Each board under the provisions of this code shall develop criteria to evaluate
8 the rehabilitation of a person when:

9 (a) Considering the denial of a license by the board under Section 480; or

10 (b) Considering suspension or revocation of a license under Section 490.

11 Each board shall take into account all competent evidence of rehabilitation
12 furnished by the applicant or licensee.

13 8. Section 2761 of the Code states:

14 The board may take disciplinary action against a certified or licensed nurse or
15 deny an application for a certificate or license for any of the following:

16 (a) Unprofessional conduct, which includes, but is not limited to, the
17 following:

18 (f) Conviction of a felony or of any offense substantially related to the
19 qualifications, functions, and duties of a registered nurse, in which event the record of
20 the conviction shall be conclusive evidence thereof.

21 9. Section 2762 of the Code states:

22 In addition to other acts constituting unprofessional conduct within the meaning
23 of this chapter [the Nursing Practice Act], it is unprofessional conduct for a person
24 licensed under this chapter to do any of the following:

25 (b) Use any controlled substance as defined in Division 10 (commencing with
26 Section 11000) of the Health and Safety Code, or any dangerous drug or dangerous
27 device as defined in Section 4022, or alcoholic beverages, to an extent or in a manner
28 dangerous or injurious to himself or herself, any other person, or the public or to the
extent that such use impairs his or her ability to conduct with safety to the public the
practice authorized by his or her license.

///
STAFF REPORT OF 10/1/10

1 (c) Be convicted of a criminal offense involving the prescription, consumption,
2 or self-administration of any of the substances described in subdivisions (a) and (b) of
3 this section, or the possession of, or falsification of a record pertaining to, the
4 substances described in subdivision (a) of this section, in which event the record of
5 the conviction is conclusive evidence thereof.

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REGULATORY PROVISIONS

10. California Code of Regulations, title 16, section 1444 states:

A conviction or act shall be considered to be substantially related to the qualifications, functions or duties of a registered nurse if to a substantial degree it evidences the present or potential unfitness of a registered nurse to practice in a manner consistent with the public health, safety, or welfare. Such convictions or acts shall include but not be limited to the following:

(a) Assaultive or abusive conduct including, but not limited to, those violations listed in subdivision (d) of Penal Code Section 11160.

(b) Failure to comply with any mandatory reporting requirements.

(c) Theft, dishonesty, fraud, or deceit.

(d) Any conviction or act subject to an order of registration pursuant to Section 290 of the Penal Code.

11. California Code of Regulations, title 16, section 1445 states:

(a) When considering the denial of a license under Section 480 of the code, the board, in evaluating the rehabilitation of the applicant and his/her present eligibility for a license will consider the following criteria:

(1) The nature and severity of the act(s) or crime(s) under consideration as grounds for denial.

(2) Evidence of any act(s) committed subsequent to the act(s) or crime(s) under consideration as grounds for denial which also could be considered as grounds for denial under Section 480 of the code.

(3) The time that has elapsed since commission of the act(s) or crime(s) referred to in subdivision (1) or (2).

(4) The extent to which the applicant has complied with any terms of parole, probation, restitution, or any other sanctions lawfully imposed against the applicant.

(5) Evidence, if any, of rehabilitation submitted by the applicant.

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1 submitted to a series of field sobriety tests which she was unable to perform as explained and
2 demonstrated. Respondent was arrested and taken to the El Centro CHP office for processing.
3 Respondent provided two breath samples that tested at .18 and .17 percent BAC.

4 **SECOND CAUSE FOR DENIAL OF APPLICATION**

5 **(October 18, 2010 Criminal Conviction for DUI on July 11, 2010)**

6 13. Respondent's application is subject to denial under sections 480, subdivision (a)(1)
7 of the Code in that she was convicted of a crime that is substantially related to the qualifications,
8 duties, and functions of a registered nurse. The circumstances are as follows:

9 a. On or about October 18, 2010, in a criminal proceeding entitled *People of*
10 *the State of California v. Bree Howington*, in Imperial County Superior Court, case number
11 BCM23224, Respondent was convicted on her plea of guilty to violating Vehicle Code section
12 23152, subdivision (b), driving with a BAC of .08 percent or more, a misdemeanor. The court
13 also found true the enhancement that Respondent was previously convicted of driving under the
14 influence, and driving with a BAC of .08 percent or more on August 14, 2009, as described in
15 paragraph 12, above. Count 1, driving under the influence of alcohol, a violation of Vehicle Code
16 section 23152, subdivision (a), was dismissed pursuant to a plea agreement.

17 b. As a result of the conviction, on or about October 18, 2010, Respondent
18 was sentenced to three years summary probation. Respondent was further ordered to complete an
19 SB-38 drinking driver program, and pay a \$1,638 fine. Respondent was permitted to convert the
20 fine into 194 hours of community service and payment of \$160.

21 c. The facts that led to the conviction were that on or about six in the morning
22 on July 11, 2010, an officer from the Brawley Police Department was dispatched to investigate a
23 subject that was trapped in a vehicle that was involved in a traffic collision. Upon arrival, the
24 officer noted a vehicle stalled on the railroad tracks with major damage. The Brawley Fire
25 Department and paramedics were already on scene evaluating Respondent who was the sole
26 occupant of the vehicle. Upon contacting Respondent, the officer noted that there was an odor of
27 an alcoholic beverage emitting from her breath and person, her eyes were bloodshot and watery,
28 and that she had bumped her head. Respondent told the officer that she last consumed four beers

1 approximately 12 hours earlier. The officer had Respondent exit her vehicle and she walked with
2 an unsteady gait. Despite the fact that she had a large contusion to her left eye and she was
3 complaining of pain to her head, she refused medical treatment. The officer noted injuries to
4 Respondent's left arm. Due to her injuries, the officer elected not to perform field sobriety tests.
5 Respondent was transported to a local hospital where she provided two breath samples that tested
6 at .12 and .13 percent BAC. Respondent provided a statement to the officer where she explained
7 that the tires on her vehicle were bald. She was driving at approximately 50 mph when she
8 entered a curve in the road. She lost control and the vehicle flipped and landed on the railroad
9 tracks.

10 THIRD CAUSE FOR DISCIPLINE

11 (Unprofessional Conduct - Dangerous Use of Alcohol)

12 14. Respondent's application is subject to denial under sections 480, subdivision
13 (a)(3)(A), and 2762, subdivision (b) of the Code in that on or about April 11, 2009, and July 11,
14 2010, Respondent used alcoholic beverages to an extent or in a manner that was dangerous and
15 injurious to herself and the public when she operated a motor vehicle while under the influence of
16 alcohol, as detailed in paragraphs 12 and 13, above, unprofessional conduct substantially related
17 to the qualifications, duties, and functions of a registered nurse.

18 FOURTH CAUSE FOR DENIAL OF APPLICATION

19 (Unprofessional Conduct - Conviction of Alcohol-Related Offenses)

20 15. Respondent's application is subject to denial under sections 480, subdivision
21 (a)(3)(A), and 2762, subdivision (c) of the Code in that on or about August 14, 2009, and October
22 18, 2010, Respondent was convicted of criminal offenses involving the consumption of alcohol as
23 detailed in paragraphs 12 and 13, above, unprofessional conduct substantially related to the
24 qualifications, duties, and functions of a registered nurse.

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PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Board of Registered Nursing issue a decision:

1. Denying the application of Bree Howington for a Registered Nurse License;
2. Taking such other and further action as deemed necessary and proper.

DATED: 2-15-2011

for LOUISE R. BAILEY, M.ED., RN
Executive Officer
Board of Registered Nursing
Department of Consumer Affairs
State of California
Complainant

SD2010703475
70431207.doc

Exhibit B

Respondent's Notice of Withdrawal of Request for Hearing

**BEFORE THE
BOARD OF REGISTERED NURSING
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Statement of Issues
Against:

BREE HOWINGTON

Respondent.

Case No. 2011-710

**RESPONDENT / APPLICANT'S NOTICE
OF WITHDRAWAL OF REQUEST FOR
HEARING**

In accordance with California Code of Regulation, title 1, section 1014(c), a party withdrawing a request for hearing, shall immediately notify the Office of Administrative Hearings and all parties. I understand that a hearing will be held upon the charges made in the Statement of Issues unless I notify the Board of Registered Nursing that I do not want the hearing previously requested on the denial of my Registered Nurse License application.

**IF YOU WISH TO WITHDRAW YOUR NOTICE OF DEFENSE OR REQUEST FOR A
HEARING, PLEASE DO SO BY DATING AND SIGNING BELOW AND DELIVERING OR
MAILING THIS FORM TO:**

G. Michael German
Deputy Attorney General IV
Office of the Attorney General
P.O. Box 85266
San Diego, CA 92186-5266

TO THE BOARD OF REGISTERED NURSING:

I, the undersigned Respondent in this proceeding, hereby acknowledge receipt of a copy of the Statement of Issues; the Statement to Respondent; Respondent/Applicant's Notice of Designation of Counsel (2 copies); Respondent/Applicant's Notice of Withdrawal of Request for Hearing (2 copies); Request for Discovery; Discovery Statutes; and Disciplinary Guidelines.

I withdraw my letter requesting a hearing.

11/30/11

Date


Signature

BREE HOWINGTON